

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:10-00111-07

BARRY ADKINS

**ORDER**

Currently before the Court is Defendant Barry Adkins' Motion to Compel (ECF No. 587).

For the reasons stated below, the Motion is **DENIED**.

**BACKGROUND**

Mr. Adkins was charged in a Superseding Indictment with conspiracy to distribute more than 1,000 kilograms of marijuana from 2002 to 2010 in violation of 21 U.S.C. § 846. On September 8, 2011, he was convicted by a jury after a two day trial. On February 6, 2012, this Court sentenced Mr. Adkins to a prison term of 151 months. Mr. Adkins filed a notice of appeal on February 21, 2012, and the United States Court of Appeals for the Fourth Circuit docketed his appeal on March 14, 2012, shortly after this Court denied his second motion for a new trial. The Motion to Compel was filed on May 18, 2012, while Mr. Adkins' appeal remains pending.

**DISCUSSION**

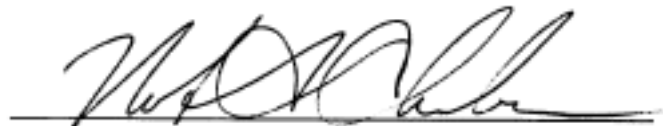
It has long been understood that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Griggs v. Provident Consumer Discount Co*, 459 U.S. 56, 59 (1982). The Supreme Court has explained that "[t]he filing of a notice of appeal is an event of jurisdictional significance- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Id.*

In the Motion to Compel, Mr. Adkins argues that the United States has a duty to disclose the Suspicious Activity Report that was used to identify Martha Brown as a potential witness. The United States denies that it has any duty to disclose the report. In his appeal, which is currently pending before the United States Court of Appeals for the Fourth Circuit Court, Mr. Adkins identifies one of the central issues to be “[w]hether the United States engaged in prosecutorial misconduct by failing to produce the suspicious activity report concerning bank teller Martha Brown.” Appellant’s Designation of Contents of App. and Statement of Issues, *United States of America v. Barry Adkins*, No. 12-4184 (4th Cir. 2012). In essence, Mr. Adkins is simultaneously asking this Court and the Court of Appeals to decide whether the United States had a duty to produce the suspicious activity report. Because he is currently litigating this issue before the Court of Appeals, this Court lacks jurisdiction to rule on the motion. *See United States v. Wooden*, 230 F. App’x 243, 244 (4th Cir. 2007) (citing *Griggs*, 459 U.S. 56, 59).

### CONCLUSION

Mr. Adkins’ Motion to Compel (ECF No. 587) is **DENIED**. The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: May 31, 2012

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE